

What's at Stake for Medical Professionals in "Pill Mill" Investigations

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In an earlier article, I detailed how the DOJ has focused its attention on the aggressive investigation and prosecution of "pill mill" cases. In this article, I discuss the consequences physicians and other medical professionals potentially face as a result of a "pill mill" investigation.

I. CRIMINAL PROSECUTION

A litany of criminal charges can be heaped on medical professionals at the conclusion of a "pill mill" investigation. Exactly what charges the government pursues will obviously depend on the facts and circumstances of each particular case. One charge that will inevitably be included in every "pill mill" indictment is an alleged violation of the Controlled Substances Act ("CSA"). The CSA governs the distribution and dispensing of various listed drugs, including narcotics, that are prescribed by physicians and other licensed medical providers. To issue a controlled substance, a physician must be licensed to practice by a state authority and must have a DEA registration number.

Under the CSA, controlled substances are placed into one of five "schedules" based on whether they have a currently accepted medical use in the United States, their relative abuse potential, and their likelihood of causing dependence when abused. Most opioids are Schedule II drugs because they have acceptable medical uses and but a high potential for abuse.

To be convicted under the CSA, the government must prove that (1) the defendant physician knowingly and intentionally distributed or dispensed a controlled substance, and (2) did so "for no legitimate medical purpose and outside the usual course of professional practice." Determining whether a physician has illegally prescribed drugs under this standard is never simple and will necessarily involve a "battle of the experts."

A criminal conviction for violating the CSA may result in a vast array of prison sentences under the federal Sentencing Guidelines, a set of advisory sentencing rules that establish a uniform policy for individuals convicted of felony crimes in federal court. The exact range may vary significantly from case-to-case, depending primarily on the type and quantity of controlled substances involved. And these ranges can be staggeringly severe. In a recent "pill mill" case in Mobile, Alabama, the physicians each faced a guidelines range of imprisonment of 30 to 240 years, although the court sentenced them well below that range (20 and 21 years, respectively) – as it had the discretion to do. In addition to applicable guidelines ranges in each case, the CSA provides for statutorily "enhanced" sentences in certain circumstances. For instance, if the government proves that a patient's death

resulted from the distribution of a Schedule II controlled substance, the convicted physician will face a sentence of no less than 20 years and up to life in prison.

II. SEIZURE AND FORFEITURE

In almost every “pill mill” case, the government will attempt to seize (take possession of) and forfeit (take ownership of) bank accounts, business assets, and personal assets of the targeted medical professional based on a theory that they are “proceeds” of the alleged “pill mill” operation or somehow “facilitated” the purported criminal enterprise. For example, following the physicians’ convictions in the case mentioned above, the government forfeited their bank accounts, investment and retirement accounts, college fund accounts, houses, beach-front condominiums, and 20-plus luxury automobiles.

III. CIVIL LIABILITY

On top of criminal prosecution, a “pill mill” investigation could result in a civil lawsuit by the government against the targeted physician or medical professional, to the extent they have billed a federal health care program. For instance, the government might bring a direct suit under the False Claims Act (“FCA”), alleging that the physician made false diagnoses, prescribed drugs for non-covered indications, or prescribed excessive or “medically unnecessary” drugs for Medicare or Medicaid patients. Likewise, the government may join in a “qui tam” suit which is initiated by a “whistleblower” – such as a current or former employee of the practice – claiming that the targeted physician or practice has violated the FCA and other laws.

IV. ADMINISTRATIVE PROCEEDINGS

In addition to facing criminal prosecution, the loss of asserts, and civil liability, physicians investigated or charged in a “pill mill” case can be subject to a number of administrative sanctions. The DEA, in particular, has a range of administrative actions it can take, such as: issuing a letter of admonition to the registrant providing notice of a violation of the applicable law / regulations; requiring the registrant to enter into a memorandum of understanding agreeing to take certain corrective steps to stave off revocation of the registration; or, for the most serious alleged violations, pursuing a show cause order to appear before an administrative law judge, during which the DEA will advocate for revocation of the registration.

Like the DEA, state professional boards (such as medical and pharmacy boards) have disciplinary authority and can sanction practitioners for professional violations, such prohibiting a physician from prescribing specific schedules of drugs, suspending a physician’s medical and/or dispensing license, or revoking the license.

Further, the Centers for Medicare & Medicaid Services (“CMS”) may limit, suspend, or revoke a provider’s Medicare billing privileges for, among other things, noncompliance with Medicare enrolment requirements, a felony conviction related to controlled substances, or a pattern of

improper prescribing practices. Likewise, state Medicaid agencies can impose various administrative sanctions against providers, including outright exclusion from the program.

V. CONCLUSION

The consequences physicians and other medical professionals face as a result of a “pill mill” investigation are varied and potentially severe. Given that, pain management practitioners should be acutely aware of any signs that they are under investigation, including, among other things, receiving a government subpoena or civil investigative demand or learning that the practice’s employees or patients have been interviewed by investigating agents. Upon receiving the slightest hint of an investigation, practitioners should act quickly in obtaining legal counsel to conduct an internal investigation, determine the practice’s potential exposure, and intervene on the practice’s behalf in the hopes of warding off further government scrutiny.



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